IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1285 of 1997

in

SPECIAL CIVIL APPLICATIONNo 4876 of 1997

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT
and
HON'BLE MR.JUSTICE S.R.BRAHMBHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G S R T C

Versus

JAGDISHBHAI AMRUTBHAI PATEL

Appearance:

1. LETTERS PATENT APPEAL No. 1285 of 1997

MR M.V. PATEL for MR HS MUNSHAW for Appellant No.

MR JV JAPEE for Respondent No. 1

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
and

HON'BLE MR.JUSTICE S.R.BRAHMBHATT

Date of decision: 12/01/2005

ORAL JUDGEMENT

(Per : HON'BLE MISS JUSTICE R.M.DOSHIT)

1. The Appellant - Gujarat State Road Transport Corporation (hereinafter referred to as the "Corporation") challenges the judgment & order dated 10th September, 1997 passed by learned Single Judge in Special Civil Application No. 4876 of 1997. By impugned order the Corporation is directed to consider the application dated 27th September, 1993 for compassionate employment made by the respondent with the appellant on merits, not denying the same on the ground of delay or bar of limitation.

2. The respondent is the son of one Amrutbhai Patel, a mechanic employed by the Corporation. The said Amrutbhai Patel passed away on 27th January, 1991 in harness. At the time the respondent was minor. The respondent attained majority on 24th November, 1991. After taking the SSC examination in the month of March, 1993, he applied for compassionate employment on 27th September,1993. The said application was rejected on 8th March, 1994 as time barred. Feeling aggrieved the respondent preferred the above Special Civil Application No. 4876 of 1997.

3. The compassionate employment in the Corporation at the relevant time was governed by its Circular No. 1275 dated 15th February, 1980, issued pursuant to the settlement dated 21st December, 1989. The said circular provided, inter alia, that the dependent member of the family of the deceased employee, if were minor at the time of the death of the employee, can be offered compassionate employment on his/her attaining majority within 10 years from the date of the death. It further provided that any such application for compassionate employment shall be made within one year from the date of attaining majority. The learned Single Judge was of the opinion that the respondent could not apply for compassionate employment as soon as he attained majority as he was prosecuting his studies. He applied for such employment after he took the SSC examination in the month of March, 1993. Learned Single Judge has also observed that the aforesaid provision is discriminatory in as much as the dependent minor who attains majority after 10 years from the date of the death of the deceased employee can get employment on compassionate ground, whereas the

dependent of the deceased employee who attains majority within a couple of years of the death of the deceased employee would be denied such employment if the application for employment is not made within one year from the date of the attainment of majority, i.e. such dependent is denied compassionate employment though he makes application for such employment within less than 10 years from the date of the death. Learned Single Judge has held that the application for compassionate employment ought not to have been rejected as time barred. Accordingly the Corporation has been directed to consider the application on merits.

4. Learned advocate Mr. Patel has appeared for the Corporation. He has submitted that the learned Single Judge has erred in traversing beyond the scope of the scheme. He has submitted that the learned Single Judge was not called upon to examine validity of the scheme. The Corporation was required to implement the circular which was issued pursuant to the settlement. The said provisions were binding to the Corporation as well as the employees. Indisputably the said circular required that a dependent of the deceased employee if were minor at the time of the death shall apply for compassionate employment within one year of his / her attanining majority. In the present case though the respondent had attained majority in the month of November, 1991 he had applied for compassionate employment in the month of September, 1993 that is beyond the period of one year from the date he attained the majority, his application for compassionate employment, therefore, could not have been entertained by the Corporation. He has submitted that the fact that the respondent was persuing education was hardly relevant. No exception could have been made on the ground of persuit for education. In support of his argument Mr. Patel has relied upon the judgments of the Honourable Supreme Court in the matters of HIRA MAN Vs. STATE OF U.P. AND OTHERS (AIR 1997 S.C. 3288) and of DALLA RAM Vs. UNION OF INDIA AND OTHERS (AIR 1999 S.C. 564). He has also relied upon the judgment of this Court in the matter of MAHESHKUMAR BABULAL SOLANKI Vs. STATE OF GUJARAT & ANR. (2001 (4) GLR pg. 3568) and an unreported judgment in the matter of MANUBHAI GOTHABHAI DESAI Vs. STATE OF GUJARAT & ORS (1998 (1) G.L.H. (U.J.) 23).

5. We do agree with Mr. Patel. The compassionate employment in public service is an exception to the statutory recruitment rules and also Articles 14 & 16 of the Constitution of India. Such employment, therefore, can be offered scrupulously in accordance with the

provisions made in that behalf and no deviation can be permitted. It is too late in the day to say that the Corporation could have exercised its discretion to entertain the application for compassionate employment made after the specified period. In the present case admittedly the respondent applied for compassionate employment nearly 2 years after he attained the age of majority. The rejection of his application was communicated to him under communication dated 8th March, 1994. The same was challenged in the above referred writ petition preferred in the year 1997. Thus even after rejection of his application the respondent did not challenge the same for another three years and more. We are of the view that the learned Single Judge was guided by undue compassion and in the process has erred in directing the Corporation to make exception in case of the respondent. Such an exception is not permissible in law.

6. For the aforesaid reasons the appeal is allowed. The impugned judgment & order dated 10th September, 1997 passed in Special Civil Application No. 4876 of 1997 is quashed and set aside. The writ petition stands dismissed. The parties shall bear their own costs.

Dt: 12-1-2005 (MS. R.M. DOSHIT, J)

(S.R. BRAHMBHATT, J)

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